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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,952	05/22/2006	Edward R.B. McCabe	220002067500	9277

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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
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SAN DIEGO, CA 92130-2040

EXAMINER

BOWERS, NATHAN ANDREW

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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07/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/579,952	Applicant(s) MCCABE ET AL.
Examiner NATHAN A. BOWERS	Art Unit 1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 5-27.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/William H. Beisner/
Primary Examiner, Art Unit 1797

Continuation of 3. NOTE: The new amendments include additional limitations that serve to alter the structure of the claimed apparatus. Since these limitations have not been previously presented, further search and consideration is necessary to evaluate patentability.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's remarks filed 06 July 2009 have been fully considered, but are not persuasive.

Applicant's principle arguments are

(a) Livesey does not describe an apparatus for culturing cells.

In response, please consider the following remarks.

The apparatus of Livesey is fully capable of accommodating a cell culture. As noted in the previous Office Action, Livesey teaches in column 8, lines 39-45 that a cell culture is provided within reservoirs 111 prior to vitrification and freezing.

(b) Livesey's apparatus is not self-contained.

In response, please consider the following remarks.

Livesey's apparatus is self-contained because each cell and media reservoir is fully capable of accommodating a cell culture. The Livesey apparatus discloses a plurality of fluid tight reservoirs capable of containing a fluid. Applicant merely asserts that the Livesey apparatus is not self-contained without providing any analysis or reasoning. Paragraphs [0067] and [0068] of Applicant's specification state that the claimed apparatus is self-contained, but do not establish a definition for the term "self-contained" that serves to distinguish the Livesey apparatus.

(c) Livesey and Rajotte do not teach distinct cell and media reservoirs.

In response, please consider the following remarks.

As previously noted, the claims do not require distinct cell and media reservoirs. Claim 5 requires a "culture vessel comprising a cell reservoir, a media reservoir..." Accordingly, while the claims do require that a reservoir must be provided for cells and media, the claims do not preclude the use of a single chamber for accommodating both cells and media.

Applicant's additional arguments pertain to the proposed claim amendments which have not been entered. Accordingly, the rejections of record have not been withdrawn.